

Senate Study Bill 1149 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED GOVERNOR BILL)

A BILL FOR

1 An Act relating to domestic abuse and other offenses involving
2 a domestic relationship, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 236.5, subsection 1, paragraph b,
2 subparagraph (6), Code 2015, is amended to read as follows:

3 (6) Unless prohibited pursuant to 28 U.S.C. §1738B, that the
4 defendant pay the clerk a sum of money for the separate support
5 and maintenance of the plaintiff and children under eighteen.
6 The court may order the defendant to provide a certified
7 statement regarding the defendant's financial ability to pay
8 support and maintenance. If the defendant fails to provide
9 full and accurate disclosure of the defendant's ability to pay
10 support and maintenance, the court shall hold the defendant in
11 contempt.

12 Sec. 2. Section 664A.7, subsection 5, Code 2015, is amended
13 to read as follows:

14 5. a. Violation of a no-contact order entered for the
15 offense or alleged offense of domestic abuse assault in
16 violation of section 708.2A or a violation of a protective
17 order issued pursuant to chapter 232, 235F, 236, 598, or 915
18 constitutes a public offense and is punishable as a simple
19 misdemeanor. Alternatively, the court may hold a person
20 in contempt of court for such a violation, as provided in
21 subsection 3.

22 b. If a person is convicted of a violation of a no-contact
23 order or a protective order under this subsection, or
24 alternatively if the person is held in contempt of court for
25 such a violation, as provided in subsection 3, the court shall
26 order the person to submit to a risk assessment pursuant to
27 section 901.5C.

28 Sec. 3. Section 708.2A, subsection 7, paragraph b, Code
29 2015, is amended by striking the paragraph and inserting in
30 lieu thereof the following:

31 b. A person convicted of a violation referred to in
32 subsection 4 shall be sentenced as provided under section
33 902.13.

34 Sec. 4. Section 708.2B, Code 2015, is amended to read as
35 follows:

1 **708.2B Treatment of domestic abuse offenders.**

2 1. As used in this section, "*district department*" means
3 a judicial district department of correctional services,
4 established pursuant to section 905.2. A person convicted of,
5 or receiving a deferred judgment for, domestic abuse assault
6 as defined in section 708.2A, shall report to the district
7 department in order to participate in a batterers' treatment
8 program for domestic abuse offenders. In addition, a person
9 convicted of, or receiving a deferred judgment for, an assault,
10 as defined in section 708.1, which is domestic abuse, as
11 defined in section 236.2, subsection 2, paragraph "e", may be
12 ordered by the court to participate in a batterers' treatment
13 program. Participation in the batterers' treatment program
14 shall not require a person to be placed on probation, but
15 a person on probation may participate in the program. The
16 district departments may contract for services in completing
17 the duties relating to the batterers' treatment programs. The
18 district departments shall assess the fees for participation
19 in the program, and shall either collect or contract for the
20 collection of the fees to recoup the costs of treatment,
21 but may waive the fee or collect a lesser amount upon a
22 showing of cause. The fees shall be used by each of the
23 district departments or contract service providers for the
24 establishment, administration, coordination, and provision of
25 direct services of the batterers' treatment programs.

26 2. In addition to the requirements of subsection 1, the
27 court shall order a person convicted of domestic abuse assault
28 in violation of section 708.2A to submit to a risk assessment
29 pursuant to section 901.5C.

30 3. District departments or contract service providers shall
31 receive upon request peace officers' investigative reports
32 regarding persons participating in programs under this section.
33 The receipt of reports under this section shall not waive the
34 confidentiality of the reports under section 22.7.

35 Sec. 5. Section 708.7, subsection 2, Code 2015, is amended

1 by adding the following new paragraph:

2 NEW PARAGRAPH. c. A person convicted of harassment in
3 the first degree shall be sentenced under section 902.13 if
4 the offense involved a domestic relationship and the sentence
5 exceeds one year.

6 Sec. 6. Section 708.11, Code 2015, is amended by adding the
7 following new subsection:

8 NEW SUBSECTION. 3A. A person convicted under subsection 3,
9 paragraph "a", or subsection 3, paragraph "b", subparagraph (1),
10 shall be sentenced under section 902.13 if the offense involved
11 a domestic relationship.

12 Sec. 7. Section 811.2, subsection 1, paragraph a,
13 unnumbered paragraph 1, Code 2015, is amended to read as
14 follows:

15 ~~All~~ Except as provided in section 811.2A, all bailable
16 defendants shall be ordered released from custody pending
17 judgment or entry of deferred judgment on their personal
18 recognizance, or upon the execution of an unsecured appearance
19 bond in an amount specified by the magistrate unless the
20 magistrate determines in the exercise of the magistrate's
21 discretion, that such a release will not reasonably assure the
22 appearance of the defendant as required or that release will
23 jeopardize the personal safety of another person or persons.
24 When such determination is made, the magistrate shall, either
25 in lieu of or in addition to the above methods of release,
26 impose the first of the following conditions of release which
27 will reasonably assure the appearance of the person for trial
28 or deferral of judgment and the safety of other persons, or, if
29 no single condition gives that assurance, any combination of
30 the following conditions:

31 Sec. 8. NEW SECTION. 811.2A Conditions of release —
32 assessment of risk.

33 1. Prior to release, a bailable defendant charged with any
34 offense involving an allegation that the defendant's release
35 may endanger the safety of another person, the person shall

1 be required to submit to a risk assessment in addition to any
2 other conditions of release under section 811.2.

3 2. The risk assessment shall be performed by the judicial
4 district of department of correctional services using a
5 validated risk assessment developed by the board of parole and
6 approved by the department of corrections. The court shall
7 consider the risk assessment in determining the appropriate
8 conditions for release. In determining whether to release
9 a defendant, the court shall determine whether sufficient
10 conditions for release are available that are designed to
11 reduce the risk to another individual, detect threatening or
12 criminal behavior, and increase the safety of individuals and
13 the general public, and balance those determinations with the
14 potential risk of harm if the defendant is released.

15 3. The court may order the defendant to participate in a
16 program that includes the use of an electronic tracking and
17 monitoring system as a condition of release. If an electronic
18 tracking and monitoring system is ordered, the court shall
19 order the defendant to pay the costs associated with the
20 imposition of the system. If the defendant fails to pay the
21 fees of the electronic monitoring system in a timely manner,
22 the court may impose garnishment of the defendant's wages in
23 order to meet the payment obligation.

24 Sec. 9. NEW SECTION. 901.5C Domestic abuse assault
25 — no-contact order or protective order violations — risk
26 assessment.

27 1. If a person is convicted of domestic abuse assault in
28 violation of section 708.2A, a violation of a no-contact order
29 or a protective order under section 664A.7, subsection 5, or
30 alternatively the person is held in contempt of court for such
31 a violation, as provided in section 664A.7, subsection 3, and
32 ordered to be supervised by the judicial district department
33 of correctional services or to participate in a batterers'
34 treatment program for domestic abuse offenders, the court shall
35 order the person to submit to a risk assessment.

1 2. The risk assessment shall be performed by the judicial
2 district department of correctional services or a contract
3 service provider of a batterers' treatment program for domestic
4 abuse offenders, using a validated risk assessment developed
5 by the board of parole and approved by the department of
6 corrections. The court shall consider the risk assessment
7 in determining the appropriate conditions for release. In
8 determining whether to release a defendant, the court shall
9 determine whether sufficient conditions for release are
10 available that are designed to reduce the risk to another
11 individual, detect threatening or criminal behavior, and
12 increase the safety of individuals and the general public, and
13 balance those determinations with the potential risk of harm
14 if the defendant is released.

15 3. The court may order the defendant to participate in a
16 program that includes the use of an electronic tracking and
17 monitoring system as a condition of release. If an electronic
18 tracking and monitoring system is ordered, the court shall
19 order the defendant to pay the costs associated with the
20 imposition of the system. If the defendant fails to pay
21 the fees of the electronic tracking and monitoring system
22 in a timely manner, the court may impose garnishment of the
23 defendant's wages in order to meet the payment obligation.

24 Sec. 10. NEW SECTION. **902.13 Minimum sentence for certain**
25 **domestic abuse assault, harassment, and stalking offenses.**

26 1. As used in this section, unless the context otherwise
27 requires:

28 a. (1) "*Family or household members*" means spouses, persons
29 cohabiting, parents, or other persons related by consanguinity
30 or affinity.

31 (2) "*Family or household members*" does not include children
32 under age eighteen of persons listed in subparagraph (1).

33 b. "*Intimate relationship*" means a significant romantic
34 involvement that need not include sexual involvement.

35 An intimate relationship does not include casual social

1 relationships or associations in a business or professional
2 capacity.

3 *c. "Offense involving a domestic relationship"* means an
4 offense involving any of the following circumstances:

5 (1) The offense is between family or household members who
6 resided together at the time of the offense.

7 (2) The offense is between separated spouses or persons
8 divorced from each other and not residing together at the time
9 of the offense.

10 (3) The offense is between persons who are parents of the
11 same minor child, regardless of whether they have been married
12 or have lived together at any time.

13 (4) The offense is between persons who have been family or
14 household members residing together within the past year and
15 are not residing together at the time of the offense.

16 (5) (a) The offense is between persons who are in an
17 intimate relationship or have been in an intimate relationship
18 and have had contact with one another within the past year
19 immediately preceding the time of the offense. In determining
20 whether persons are or have been in an intimate relationship,
21 the court may consider the following nonexclusive list of
22 factors:

23 (i) The duration of the relationship.

24 (ii) The frequency of interaction.

25 (iii) Whether the relationship has been terminated.

26 (iv) The nature of the relationship, characterized by
27 either party's expectation of sexual or romantic involvement.

28 (b) A person may be involved in an intimate relationship
29 with more than one person at a time.

30 2. A person who has been convicted of a third or subsequent
31 offense of domestic abuse assault under section 708.2A,
32 subsection 4, shall be denied parole or work release until the
33 person has served a minimum term of confinement of three years.

34 3. A person who has been convicted of the offense of
35 harassment in the first degree under section 708.7, subsection

1 2, and the offense involved a domestic relationship, shall be
2 denied parole or work release until the person has served a
3 minimum term of confinement of one year.

4 4. A person who has been convicted of a third or subsequent
5 offense of stalking under section 708.11, subsection
6 3, paragraph "a", and the offense involved a domestic
7 relationship, shall be denied parole or work release until the
8 person has served a minimum term of confinement of five years.

9 5. A person who has been convicted of the offense of
10 stalking under section 708.11, subsection 3, paragraph
11 "b", subparagraph (1), and the offense involved a domestic
12 relationship, shall be denied parole or work release until the
13 person has served a minimum term of confinement of three years.

14 Sec. 11. Section 903A.2, subsection 1, paragraph a,
15 unnumbered paragraph 1, Code 2015, is amended to read as
16 follows:

17 Category "A" sentences are those sentences which are not
18 subject to a maximum accumulation of earned time of fifteen
19 percent of the total sentence of confinement under section
20 902.12 or 902.13. To the extent provided in subsection 5,
21 category "A" sentences also include life sentences imposed
22 under section 902.1. An inmate of an institution under the
23 control of the department of corrections who is serving a
24 category "A" sentence is eligible for a reduction of sentence
25 equal to one and two-tenths days for each day the inmate
26 demonstrates good conduct and satisfactorily participates in
27 any program or placement status identified by the director to
28 earn the reduction. The programs include but are not limited
29 to the following:

30 Sec. 12. Section 903A.2, subsection 1, paragraph b, Code
31 2015, is amended to read as follows:

32 b. (1) Category "B" sentences are those sentences which
33 are subject to a maximum accumulation of earned time of
34 fifteen percent of the total sentence of confinement under
35 section 902.12 or 902.13. An inmate of an institution under

1 the control of the department of corrections who is serving a
2 category "B" sentence is eligible for a reduction of sentence
3 equal to fifteen eighty-fifths of a day for each day of good
4 conduct by the inmate.

5 (2) An inmate required to participate in a domestic abuse
6 treatment program shall not be eligible for a reduction of
7 sentence unless the inmate participates in and completes a
8 domestic abuse treatment program established by the director.

9 Sec. 13. Section 904A.4, subsection 8, Code 2015, is amended
10 to read as follows:

11 8. a. The board of parole shall implement a risk assessment
12 program which shall provide risk assessment analysis for the
13 board.

14 b. The board of parole shall also develop a risk assessment
15 validated for domestic abuse-related offenses in consultation
16 with the department of corrections. The board may adopt rules
17 pursuant to chapter 17A relating to the use of the domestic
18 abuse risk assessment.

19 Sec. 14. NEW SECTION. 905.16 Electronic tracking and
20 monitoring system.

21 1. A person placed on probation, parole, work release,
22 special sentence, or any other type of conditional release
23 for any of the following offenses may be supervised by an
24 electronic tracking and monitoring system in addition to any
25 other conditions of supervision:

26 a. Domestic abuse assault in violation of section 708.2A,
27 subsection 4.

28 b. Harassment in the first degree in violation of section
29 708.7, subsection 2, if the offense involved a domestic
30 relationship as defined in section 902.13.

31 c. Stalking under section 708.11, subsection 3, paragraph
32 "b", if the offense involved a domestic relationship as defined
33 in section 902.13.

34 d. Stalking under section 708.11, subsection 3, paragraph
35 "c", subparagraph (1), if the offense involved a domestic

1 relationship as defined in section 902.13.

2 Sec. 15. Section 907.3, subsection 1, paragraph a, Code
3 2015, is amended by adding the following new subparagraphs:

4 NEW SUBPARAGRAPH. (013) The offense is a violation referred
5 to in section 708.2A, subsection 4.

6 NEW SUBPARAGRAPH. (0013) The offense is a violation
7 of section 708.7, subsection 2, and the offense involved a
8 domestic relationship as defined in section 902.13.

9 NEW SUBPARAGRAPH. (00013) The offense is a violation
10 referred to in section 708.11, subsection 3, paragraph "a",
11 and the offense involved a domestic relationship as defined in
12 section 902.13.

13 NEW SUBPARAGRAPH. (000013) The offense is a violation of
14 section 708.11, subsection 3, paragraph "b", subparagraph (1),
15 and the offense involved a domestic relationship as defined in
16 section 902.3.

17 Sec. 16. Section 907.3, subsection 2, paragraph a, Code
18 2015, is amended by adding the following new subparagraphs:

19 NEW SUBPARAGRAPH. (8) The offense is a violation referred
20 to in section 708.2A, subsection 4.

21 NEW SUBPARAGRAPH. (9) The offense is a violation of section
22 708.7, subsection 2, and the offense involved a domestic
23 relationship as defined in section 902.13.

24 NEW SUBPARAGRAPH. (10) The offense is a violation of
25 section 708.11, subsection 3, paragraph "a", and the offense
26 involved a domestic relationship as defined in section 902.13.

27 NEW SUBPARAGRAPH. (11) The offense is a violation of
28 section 708.11, subsection 3, paragraph "b", subparagraph (1),
29 and the offense involved a domestic relationship as defined in
30 section 902.13.

31 Sec. 17. Section 907.3, subsection 3, Code 2015, is amended
32 by adding the following new paragraph:

33 NEW PARAGRAPH. 0a. The sentence imposed under section
34 902.13 for a violation referred to in section 708.2A,
35 subsection 4.

1

EXPLANATION

2

The inclusion of this explanation does not constitute agreement with
the explanation's substance by the members of the general assembly.

3

4 This bill relates to domestic abuse and other offenses
5 involving a domestic relationship, and provides penalties.

6 DOMESTIC ABUSE — PAYMENT OF SUPPORT AND MAINTENANCE. The
7 bill specifies that upon a finding that a defendant has engaged
8 in domestic abuse pursuant to Code chapter 236 (not a criminal
9 proceeding), the court may order the defendant to provide a
10 certified statement to the court regarding the defendant's
11 ability to pay support and maintenance when ordering the
12 defendant to pay such support and maintenance. Under the bill,
13 if the defendant fails to provide the certified financial
14 statement providing full and accurate disclosure, the court
15 shall hold the defendant in contempt of court.

16 MANDATORY RISK ASSESSMENT. Under the bill, if a person
17 convicted of a violation of a no-contact order or a protective
18 order pursuant to Code chapter 664A, or alternatively the
19 person is held in contempt of court for such a violation, and
20 ordered to be supervised by the judicial district department
21 of correctional services or to participate in a batterers'
22 treatment program, the court shall order the person to submit
23 to a risk assessment pursuant to new Code section 901.5C. If
24 a person is convicted of domestic abuse assault under Code
25 section 708.2A, the bill requires the person to submit to a
26 risk assessment. The bill also provides that prior to release,
27 a bailable defendant charged with any offense involving an
28 allegation that the defendant's release may endanger the safety
29 of another person, the person shall be required to submit to a
30 risk assessment in addition to any other conditions of release
31 under Code section 811.2.

32 REQUIREMENTS OF MANDATORY RISK ASSESSMENT. The bill
33 requires the risk assessment be performed by the judicial
34 district department of correctional services or a contract
35 service provider of a batterers' treatment program for domestic

1 abuse offenders, using a validated risk assessment developed
2 by the board of parole and approved by the department of
3 corrections. The bill also requires the court to consider
4 the risk assessment in determining the appropriate conditions
5 for release. In determining whether to release a defendant,
6 the court shall determine whether sufficient conditions for
7 release are available that are designed to reduce the risk to
8 another individual, detect threatening or criminal behavior,
9 and increase the safety of individuals and the general public,
10 and balance those determinations with the potential risk of
11 harm if the defendant is released.

12 ELECTRONIC TRACKING AND MONITORING. The bill provides that
13 the court may order the defendant to participate in a program
14 that includes the use of an electronic tracking and monitoring
15 system as a condition of release in a mandatory risk assessment
16 situation for violating a no-contact order or protective
17 order, being convicted of domestic abuse assault, or as a
18 condition of release for a bailable defendant if the defendant
19 is a risk to another person. If an electronic tracking and
20 monitoring system is ordered, the court is required to order
21 the defendant to pay the costs associated with the imposition
22 of the system. If the defendant fails to pay the fees of the
23 electronic tracking and monitoring system in a timely manner,
24 the bill provides that the court may impose garnishment of the
25 defendant's wages in order to meet the payment obligation.

26 The bill also specifies that a person placed on probation,
27 parole, work release, special sentence, or any other type of
28 conditional release may be supervised by an electronic tracking
29 and monitoring system in addition to any other conditions
30 of supervision if the person was convicted of any of the
31 following offenses: domestic abuse assault in violation of
32 Code section 708.2A(4); harassment in the first degree in
33 violation of Code section 708.7(2), and the offense involved a
34 domestic relationship; stalking in violation of Code section
35 708.11(3)(a), and the offense involved a domestic relationship;

1 and stalking in violation of Code section 708.11(3)(b)(1), and
2 the offense involved a domestic relationship.

3 MANDATORY MINIMUM SENTENCE — DOMESTIC ABUSE ASSAULT. If
4 a person is convicted of a third or subsequent domestic abuse
5 assault as referred to in Code section 708.2A(4), the bill
6 requires the person to serve a three-year mandatory minimum
7 prison sentence. A person who commits a third or subsequent
8 domestic abuse assault commits a class "D" felony. The bill
9 and current law also prohibit a person convicted of such a
10 domestic abuse from receiving a deferred judgment or sentence,
11 or a suspended sentence.

12 MANDATORY MINIMUM SENTENCE — DOMESTIC RELATIONSHIP.
13 The bill defines "domestic relationship" similarly to the
14 relationships required to commit "domestic abuse" in Code
15 section 236.2. If a person is convicted of harassment in the
16 first degree in violation of Code section 708.7(2), and the
17 offense involved a domestic relationship, the bill requires
18 the person serve a one-year mandatory minimum sentence, if
19 the court sentences the person to a term of confinement that
20 exceeds one year. A person who commits harassment in the
21 first degree commits an aggravated misdemeanor. The bill
22 also prohibits a person convicted of the harassment offense
23 from receiving a deferred judgment or sentence. If a person
24 convicted of a third or subsequent stalking in violation of
25 Code section 708.11(3)(a), and the offense involved a domestic
26 relationship, the bill requires the person serve a mandatory
27 five-year minimum prison sentence. A person who commits such
28 a stalking offense commits a class "C" felony. The bill also
29 prohibits the person from receiving a deferred judgment or
30 sentence. If a person convicted of stalking in violation
31 of Code section 708.11(3)(b)(1), and the offense involved a
32 domestic relationship, the bill requires the person serve a
33 mandatory three-year minimum prison sentence. A person who
34 commits such a stalking offense commits a class "D" felony.
35 The bill also prohibits the person from receiving a deferred

1 judgment or sentence.

2 ACCUMULATION OF EARNED TIME. The bill changes the following
3 offenses from a category "A" sentence under Code section 903A.2
4 to a category "B" sentence under Code section 903A.2: a third
5 or subsequent offense of domestic abuse assault in Code section
6 708.2A(4); harassment in the first degree in Code section
7 708.7(2), if the offense involved a domestic relationship
8 and the sentence by the court exceeds one year; a third or
9 subsequent offense of stalking under Code section 708.11(3)(a),
10 if the offense involved a domestic relationship; and stalking
11 under Code section 708.11(3)(b)(1), if the offense involved a
12 domestic relationship. Changing an offense from a category
13 "A" sentence to a category "B" sentence in effect reduces the
14 maximum accumulation of earned time from one and two-tenths
15 days for each day the inmate demonstrates good conduct and
16 satisfactorily participates in any program or placement to a
17 maximum accumulation of earned time of fifteen eighty-fifths
18 of a day for each day of good conduct. However, the category
19 "B" offenses in the bill are not limited to serving at least
20 seven-tenths of the maximum term of the person's sentence as
21 provided in Code section 902.12 but are required to serve the
22 mandatory minimum sentence in new Code section 902.13 in the
23 bill.

24 The bill also specifies that an inmate sentenced under new
25 Code section 902.13 is required to participate in a domestic
26 abuse treatment program, if required, and is not eligible for
27 a reduction of sentence unless the defendant participates and
28 completes such a program. If a defendant participates and
29 completes the domestic abuse treatment program, the defendant
30 is entitled to a reduction of fifteen eighty-fifths of a day
31 for each day the defendant demonstrates good conduct and
32 participates in a program or placement.

33 BOARD OF PAROLE — RULES. The bill requires the board
34 of parole to develop a validated risk assessment model for
35 domestic abuse assault in consultation with the department of

S.F. _____ H.F. _____

1 corrections.